

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION

RAJA NICHOLAS SALAMEH, M.D.	§	
	§	
v.	§	Case No. _____
	§	
McALLEN MEDICAL CENTER, INC.,	§	
YURI BERMUDEZ, AND ELMO LOPEZ	§	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1331, 1367, 1441, and 1446, and all other applicable laws, McAllen Hospitals, L.P. d/b/a McAllen Medical Center (improperly named as McAllen Medical Center, Inc.), Yuri Bermudez, and Elmo Lopez (collectively "Defendants"), hereby gives Notice of Removal of the above action, *Roger Nicolas Salameh, M.D. v. McAllen Medical Center, Inc., Yuri Bermudez, and Elmo Lopez*, bearing Civil Action Number C-3653-14-E, from the 275<sup>th</sup> Judicial District Court of Hidalgo County, Texas, United States District Court for the Southern District of Texas.

As grounds for removal, Defendants state as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. On April 9, 2014, Plaintiff filed a Petition against the above-captioned Defendants in the 275th Judicial District Court of Hidalgo County, Texas. Defendants were served with Plaintiff's Original Petition and Application for Temporary Restraining Order and Temporary Injunctive Relief on April 10, 2014. Pursuant to 28 U.S.C. §1446 (a), a true and legible copy of the Petition and Summons are attached as Exhibit "A." Pursuant to Local Rule 81, the State

Court Docket, all executed process, pleadings, and Orders, and the Index of matters being filed are attached as Exhibit "B."

2. In his Original Petition, Plaintiff requests the State Court to issue a Temporary Restraining Order prohibiting McAllen Medical Center from suspending Plaintiff's privileges at McAllen Medical Center and reporting and/or publishing the summary suspension against Plaintiff to any third party, including but not limited to the National Practitioner's Data Bank and/or the Texas Medical Board. As acknowledged by Plaintiff, reporting of a physician's summary suspension to the National Practitioners Data Bank is governed by the Health Care Quality Improvement Act (HCQIA) codified in 42 U.S.C. section 11101, et. seq.

3. The 275<sup>th</sup> Judicial District Court of Hidalgo County, Texas issued Temporary Restraining Order on April 10, 2014. On April 23, 2014, a hearing was held and Counsel for both Plaintiff's and Defendant's made arguments for and against issuance of a Temporary Injunction. The State Court did not rule on the Temporary Injunction, but did extend the Temporary Restraining Order by 14 days. A hearing on the Temporary Injunction is now set to be heard on May 6, 2014.

## II.

### NOTICE OF REMOVAL AS TIMELY FILED

4. This lawsuit is a civil action within the meaning of the acts of Congress relating to the removal of causes.

5. Defendants received a copy of the initial pleadings by process server on April 10, 2014.



6. The removal of this action to this Court is timely filed under 28 U.S.C. §1446(b) because this Notice of Removal is filed within 30 days after April 10, 2014, which is the date Defendant's first received the Summons and Original Petition in this action.

7. The United States District Court for the Southern District of Texas is the proper place to file this Notice of Removal under 28 U.S.C. §1441 (a) because it is in the Federal District Court that embraces the place where the original action was filed and is pending.

### III.

#### THIS COURT HAS FEDERAL QUESTION JURISDICTION

8. In addition to Plaintiff's request for temporary relief, Plaintiff's Original Petition seeks money damages as a result of alleged violation of the HCQIA codified in 42 U.S.C. §11101, et. seq. Therefore, Federal Question Jurisdiction exists over Plaintiff's claims under 28 U.S.C. §1331 because the resolution of Plaintiff's claims will require adjudication of disputed questions of Federal law.

9. To the extent the Petition alleges statutory, state common law or other nonfederal claims, this Court has supplemental jurisdiction over any such claims over 28 U.S.C. §1367 because those claims arise out of the same operative facts as Plaintiff's claims under the HCQIA codified in 42 U.S.C. §11101, et. se. and "form part of the same case or controversy under Article 3 of the United States Constitution." 28 U.S.C. §1367(a).

10. Because Plaintiff's HCQIA claims arise under the laws of the United States, removal of this entire cause of action is therefore appropriate under 28 U.S.C. §§1441(a) - (c).

IV.

NOTICE OF REMOVAL TO THE 275TH JUDICIAL DISTRICT COURT  
OF HIDALGO COUNTY, TEXAS

11. Concurrently with this Notice of Removal, pursuant to 20 U.S.C. §1446(a) Defendants will file a copy of this Notice with the 275<sup>th</sup> Judicial District Court of Hidalgo County, Texas. A copy of the written notice of their Notice of Removal to Federal Court is attached hereto as Exhibit "C." In accordance with 28 U.S.C. §1446(d) Defendants will give written notice to Plaintiffs by contemporaneously serving this Notice of Removal on Plaintiffs.

12. If any question arises as to the propriety of removal of this action, Defendants respectfully request the opportunity to present a brief and oral argument in support of its position that this case is removable. See *Sierminski v. Trans South Fin. Court.*, 216F.3d. 945, 949 (11th Cir. 2000) (announcing general rule that post-removal evidence in asserting removal jurisdiction may be considered by the Court).

13. Pursuant to Local Rule 81, a list of all counsel of record, including address, telephone numbers, and parties responsible, is attached as Exhibit "D."

V.

CONCLUSION

14. For the foregoing reasons, Defendants respectfully request that this civil action be, and is hereby, removed to the United States District Court for the Southern District of Texas, that this Court assume jurisdiction of the civil action, and that this Court enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to Plaintiffs' counsel of record via certified mail, return receipt requested, on this 30<sup>th</sup> day of April, 2014.



Gerald E. Castillo